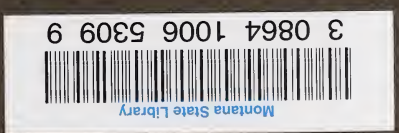
Vetoes by Gov. Toole
Of Bills passed by the Legislature
Session of 1905.



STATE OF MONTANA

VETOES

BY GOV. TOOLE

Of Bills Passed by the Legislature

Session of 1905

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Vetoes by the Governor.

VETO OF HOUSE BILL 58—"THE HATHORN BILL."

To the Speaker of the House of Representatives:

I herewith return House Bill No. 58, entitled a bill for "An act creating the Thirteenth Judicial District of the State of Montana, to be composed of the Counties of Rosebud and Yellowstone; and providing for the appointment of a Judge thereof," without my approval and with my objections thereto.

It is proposed to create a new district out of Yellowstone and Rosebud counties, to be known as the Thirteenth District, and provide for a new Judge for the district thus created.

I am opposed to the policy of increasing the number of Judges unless persuaded of its necessity. My position on this question is more pronounced when we consider the financial condition of the State, which I have emphasized on another occasion. Until there is concurrent proof that the public administration of justice in any district is suffering from an inadequate Judicial force and the finances of the State are available to pay the salary of another Judge, I prefer to rely upon the strong sense of duty and of diligence which quite generally animates the Bench. I am not persuaded of the necessity of creating the district mentioned in the bill, or of increasing the number of Judges in order to supply the proposed district with a separate Judge.

No Necessity for Another Judge.

On the contrary, I am quite convinced that it is a useless expense. I have been furnished with the following information which I deem reliable and of great value in this connection:

Number of civil and criminal cases commenced in each Judicial District in Montana in 1903, according to the last annual report of the bureau of agriculture, labor and industry:

First district	235	Seventh district	281
Second district	775	Eighth district	253
Third district	261	Ninth district	139
Fourth district	282	Tenth district	193
Fifth district	242	Eleventh district	245
Sixth district	273	Twelfth district	186

Number of cases, both civil and criminal, begun in the year 1904 in each of the Counties in the Sixth and Seventh Judicial

districts: Dawson, 42; Custer, 62; Rosebud, 32; Yellowstone, 122; Carbon, 84; Sweet Grass, 36; Park, 142.

In 1904 there were 258 civil and criminal cases commenced in the Seventh District, a decrease of 23 as compared with the preceding year. In the Sixth Judicial District there were 262 civil and criminal cases begun, four more than in the Seventh District. Excepting the County of Lewis and Clark, where it is admitted only one Judge is necessary, the average number of cases commenced in the year 1903 for each District Judge is a fraction over 239. In other words, the Judge of the Seventh Judicial District has only 19 cases more begun in his District than the average of the District Judges of the State. The figures for the year 1904 are taken from letters received from the Clerks of the Court in the Counties comprising of the Sixth and Seventh Districts.

House Bill No. 58 will make two districts, one of which had only 104 cases commenced last year, and the other only 154.

Violates Constitution and Public Policy.

Apart from this view, which in my opinion, ought to be controlling, this bill, if not unconstitutional in attempting to name the Judge for the new district, is violative of sound public policy.

"Experience has shown," says an American statesman, "that it is the easiest, as it is also the most attractive of studies, to frame Constitutions for the self-government of free States and Nations, but I think experience has equally shown that it is the most difficult of all political labors to preserve and maintain such free Constitutions of self-government when once happily established."

"I know no other way," said he, "in which they can be preserved except by constant adherence to them through the vicissitudes of our political existence, with such adaptations as may become necessary—always to be affected, however, through the agencies and in the forms prescribed in the original Constitutions themselves."

I have not had opportunity for exhaustive research into authorities or precedents, but I have had ample time for reflection upon what seems to be a gradual encroachment of the Legislative upon the Executive department of our State Government, and after careful deliberation, I find myself constrained by an imperious sense of duty, as the representative of a co-ordinate branch of the State Government, to protest against the dangerous innovation proposed by this bill.

It is uniformly admitted that the continued success of a republican form of Government is due to the wonderful wisdom with which the functions of Government were distributed between the three principal departments: the Legislative, the Executive and the Judicial.

Another provision worthy of note is that which gives to the Governor the **"Supreme Executive power of the State."**

Eminent constitutional lawyers have gone so far as to maintain that the exercise of the appointive power by a Legislative body

is positively forbidden by that clause (found in the Constitution of every State) which divides the powers of Government into three departments, Legislative, Executive and Judicial, and prohibits those charged with the exercise of one class of power from exercising powers belonging to either of the others. They have contended, and in Indiana their contention has become law (State v. Denny, 4 L. R. A., 79), that although a Constitution is utterly barren of any provision corresponding with Section 7 of Article VII of the Consitution of this State, though nothing whatever is said in it as to who shall nominate and appoint to office—yet, so intrinscially Executive in its character is the power of appointment to public office, that it is referred to the Executive and witheld from the Legislative department as a matter of course, and without express mention, in any classification of the powers of government; and that attempts on the part of the Legislature to exercise it, even when it is not (as it is in this State) expressly conferred on the Executive, involve direct infractions of the clause of the Constitution by which each department is confined to its own sphere of duties.

It is true that by a number of states this extreme doctrine has been rejected. The Supreme Court of California, for example, in the case of People v. Freeman, 13 Am. St. Rep., 125, decided that the power of appointment to office was not essentially an Executive function, and that it might be exercised by the Legislature where "it is not regulated by express provisions of the Constitution." That decision was rendered in August, 1889; and in that State at that time the power of appointment to office was not "regulated by express provisions of the Constitution;" that is to say, there was not in the Constitution of California any clause corresponding with Section 7 of Article VII of the Constitution of this State, expressly conferring such power on the Executive.

Constitutional Conventions' Work.

The constitutional convention of this State was at that time, August, 1889, in session; and perhaps with the California case in view it proceeded to "regulate" the appointive power in this State "by express provision of the Constitution," and to set at rest so far as plain language could do it, the question where that power should lie. It adopted, and the people of this State ratified the provision which is now Section 7 of Article VII of our Constitution, a provision not frequently met with in State Constitutions; and one has only to examine that section and compare it with the corresponding section of the Federal Constitution to satisfy himself that it was modeled after the provisions of the Federal Constitution, and that its purpose was to vest in the Executive of this State the same plenary powers of appointment, except in the case of appointments otherwise in the Constitution itself provided for, which is by the Federal Constitution vested in the President of the United States.

To make this clear, the provisions in question of each Constitution are quoted. The material part of Section 2, Article II of the Federal Constitution reads:

"He (the President) shall nominate, and by and with the advice and consent of the Senate shall appoint Ambassadors, other public ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the Courts of Law, or in the heads of departments."

Section 7 of Article VII of our state Constitution reads:

"The Governor shall nominate, and by and with the consent of the Senate, **appoint all officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for.**"

Provisions the Same in Both Constitutions.

Wherein is the power of appointment, given by the Federal Constitution to the President, greater than the power of appointment given by our own Constitution to the Executive of this State? A comparison of the passages above quoted will satisfy any one that both the general grant of power, and the exception from that grant, are in each instrument the same. The President is given general power to nominate, and by and with the advice and consent of the Senate, to appoint to all offices provided for by the Federal Constitution; the Governor of this State is given general power to nominate and by and with the consent of the Senate to appoint "all officers whose offices are established by the Constitution" of this State. The President was given the additional power to appoint to offices which should thereafter "be established by law; the Governor of this State was given the additional power to appoint to offices **"which may be created by law."**

From the general grant of appointive power given by the Federal Constitution to the National Executive there were excepted appointments "herein otherwise provided for;" and from the general grant of appointive power given by our Constitution to the State Executive there were excepted appointments "otherwise provided for."

The Federal Constitution has been the organic law of the Nation for nearly 116 years; and during that time the exclusive right of the Executive, as against the Legislative Department, to appoint to the public offices of the Nation, whether created by the Constitution or subsequently established, has never been questioned. An act of Congress creating an office of the United States, which should assume to dictate who should fill it, would be an absurdity. No such act has ever, so far as known, been proposed; yet such an act would not more plainly violate the Federal Constitution than does this act violate the Constitution of this State.

It may be urged that the power of appointment given by the Federal Constitution to the National Executive is greater than the power of appointment given by our Constitution to the Govenor, in this: That the President is empowered to appoint all officers of the United States "whose appointments are not herein otherwise provided for," whereas the Governor is given power to appoint all officers "whose appointment or election is not otherwise provided for;" and it may be contended that the phrase "otherwise provided for" in our Constitution does not necessarily mean "otherwise in this Constitution provided for." But what else can it mean? The phrase clearly refers to provisions then, at the date of the adoption of the Constitution, in existence; it says "whose appointment is otherwise provided for;" not "whose appointment shall be otherwise provided for;" and the only instrument in which such other provisions could be found (because the only body of State law at that time in existence) was the Constitution itself. But if there could be any doubt of the matter the decisions of the Courts set such doubts at rest. The Constitution of Nevada has the phrase, "all officers whose election or appointment is not otherwise provided for;" and in the case of State v. Rosenstock, II. Nevada 135, that phrase was construed by the Court as meaning, and apparently conceded by counsel on both sides to mean "otherwise in this Constitution provided for." And to the same effect is the case of Meyer v. Baltimore, 74 Am. Dec. 582, a Maryland case.

Montana Case Cited.

It is true that in the case of State v. Mayhew, 21 Mont., page 93, the Supreme Court of this State held that the Legislature had the power in an act creating a new county, to name the first Board of County Commissioners; but the question here raised was not considered or passed on by the Supreme Court in that case. In the Mayhew case the right of the Legislature to appoint the County officers was challenged solely on the ground that it was an interference with the right of local self-government; it was not challenged on what seems to be the much more tenable ground, that the Legislature did not possess it for the simple reason that the Constitution had lodged it somewhere else; and this point not being presented, it was of course not decided.

I will not stop, however, to further argue the question whether the Legislative Assembly may appoint a person to an office of its own creation where the Constitution is silent as to the manner of appointment, for the manifest reason that the office of District Judge is created by the Constitution and not by the Legislature. The Legislature does not create the office. It has authority under the Constitution to "increase or decrease the number of judges and divide the State or any part thereof into new districts." This is the express limit of its authority so far as a District Judge is concerned.

The moment a new district is established and provision is

made for an increase in the Judiciary, that moment a vacancy exists in the office of Judge.

How is that vacancy filled under the Constitution? Section 34 of Article VIII of the Constitution points the way. It is as follows:

"Vacancies in the office of Justice of the Supreme Court or Judge of the District Court, or Clerk of the Supreme Court, shall be filled by appointment by the Governor of the State."

Power With the Governor.

But whether an office is created by the Constitution or by law, if it be a State office, the appointing power resides in the Governor. Section 7 of Article VII is as follows:

"The Governor shall nominate, and by and with the consent of the Senate, appoint all officers whose offices are established by this Constitution, or which may be created by Law, and whose appointment or election is not otherwise provided for."

It is evident that this section is dealing exclusively with State officers. The manifest meaning of the clause "or which may be created by law, and whose appointment or election is not otherwise provided for" is that all such officers as "may be created by law" and "whose appointment or election is not otherwise provided for" shall be appointed by the Governor" by and with the "consent of the Senate."

Recurring to Section 34 of Article VIII, supra, it will be observed that the appointment of Judge of a District Court is otherwise provided for and that the "consent of the Senate" in that case is not required.

Calling your attention to the well known provision of our Constitution by which the powers of Government are divided and one department is prohibited from the exercise of those powers which belong to another, and protesting against any encroachment upon the Executive by the Legislative Department, I affirm that if the power to appoint a District Judge by the Legislature can be sustained by any strained construction of our Constitution, the policy of exercising that power is inherently bad and dangerous in the extreme.

"No one," says Mechem, a law writer of renown, "can investigate this question without being strongly impressed with the conviction that the weight of opinion, both among statesmen and judges, is that **the power of appointing to public office as a matter of policy ought not to be regarded as a Legislative function."**

Mr. Story, in his great work on the Federal Constitution, which is alike applicable to our fundamental law, furnishes ample reasons for condemning such a policy. Disclaiming any reflection upon any member of this honorable body or the person named in the bill, I quote the language of that great commentator as singularly apt and lucid. With prophetic foresight and consumate judgment, he seems to cover the case in the following language:

Story's Opinion Quoted.

"Those who are accustomed to profound reflection upon the human character and human experience will readily adopt the opinion that one man of discernment is better fitted to analyze and assume the peculiar qualities adapted to particular offices, than any body of men of equal or even superior discernment; his sole and undivided responsibility will naturally beget a livelier sense of duty and a more exact regard to reputation. He will inquire with more earnestness and decide with more impartiality; he will have fewer personal attachments to gratify than a body of men, and will be less liable to be misled by his private friendships and affections, or, at all events, his conduct will be more open to scrutiny and less liable to be misunderstood.

"If he ventures upon a system of favoritism, he will not escape censure and can scarcely avoid public detection and disgrace. **But in a public body appointments will be materially influenced by party attachments and dislikes, by private animosities and antipathies and partialities, and will be generally founded in compromises, having little to do with the merit of candidates and much to do with the selfish interests of individuals and cabals. They will be too much governed by local or sectional or party arrangements.**"

Speaking of the Executive, he says: "He will be compelled to consult public opinion in the most important appointments and must be interested to vindicate the propriety of his appointments by selections from those whose qualifications are unquestioned and unquestionable. If he should act otherwise and surrender the public patronage into the hands of profligate men or low adventurers, it will be impossible for him long to retain public favor. Nothing—no, not even the whole influence of a party—could long screen him from the just indignation of the people. Though slow, the ultimate award of popular opinion would stamp upon his conduct its merited infamy."

Thomas Jefferson's Words.

Last but not least, and greater than all of them, I summon that great statesman and founder of Democracy, Thomas Jefferson, the patron saint of all parties, whose figure it is said "comes down in history with the Declaration of Independence in one hand and the title deed of Louisiana in the other," the only man, dead or alive, of whom it has been said by the late Senator George F. Hoar, "that men of every variety of political opinion, however far asunder, find confirmation of their doctrine in him." In a letter to Samuel Kercheval, dated July 16, 1816, Jefferson said:

"Nomination to office is an Executive function. To give it to the Legislature as we do (in Virginia) is a violation of the principles of division of powers. It swerves the members from correctness by tempting them to intrigue for offices themselves and to corruptly barter for votes, and destroys responsibility by divid-

ing it among a multitude. By leaving nomination in its proper place among Executive functions, the principle of the distribution of the powers is preserved, and responsibility weighs with its force upon single head."

So that, independent of the question as to whether the power of appointment actually exists under the Constitution, it is evident that the policy of exercising it is altogether wrong and freighted with great possibilities for mischief.

Two years ago, upon a failure to secure Legislation provided for the appointment or election of two additional Justices of the Supreme Court, a measure was brought forth providing for the appointment of a Supreme Court Commission by the Justices of the Supreme Court. This measure, in my opinion, had nothing to recommend it except the fact that the Supreme Court was in urgent need of some assistance.

I could not, with a proper sense of public duty, give my approval to such a measure, believing it to be an innovation upon the Executive branch of the government; but, yielding solely to the general sentiment of the legislature and the Supreme Court, I suffered it to become a law without my approval, believing that there should be no attempt to further encroach upon the salutary principle which recognizes the distinction between the several departments of government.

Further Encroachment.

But it seems that I was in error in this assumption. We find not only this bill, but three or four others of like import introduced into the present session and carried through various stages of consideration, creating new offices of great importance and naming the officers in the bills.

I should have been admonished then as I am determined now, so far as my power as Governor is concerned to

> "Stop innovation in its early stage,
> For when the upstart thing grows strong with age
> No time nor strength of tenets stop its rage."

If bills of this character shall meet with the approval of the Executive and become laws, it is only a question of time when the Executive, having sat supinely by and seen the powers of his department gradually destroyed and frittered away, will be called upon to approve a bill providing for the appointment of the Governor by the Legislative Assembly; and he would be obliged, it seems, to approve it or resign in favor of some one who more fully appreciated the responsibilities of his office, and had the courage of his convictions.

So far as I am personally concerned, I have no desire to exercise the power of appointment. The exercise of this power is not always, indeed, not often, satisfactory or agreeable from a personal standpoint. It invariably leaves in its train disappointed ambitions and often life-long animosities, but such considerations cannot be taken into account or allowed to weigh the

balance down against a Constitutional duty. There are many other things pertaining to the duties of the Executive which are far from being satisfactory or agreeable but which nevertheless must be done.

The great debt which the Legislature owes to the people of Montana can be more honorably and more worthily paid than by vainly seeking to find an office for every one of that vast multitude of deserving and patriotic citizens who eagerly seek such appointments.

Nor can it be said that I shall have fairly discharged my duty to the people by merely dispensing official favors to those who, with their petitions and importunities, daily lay siege to the Executive office. Appointing to office is only a part of my duty. Has the trust been abused? Can it be said that I have in the past, with a false sense of party fealty, turned a deaf ear to those who have politically differed from me, and appointed unworthy men to public office?

Firm to Do His Duty.

Disclaiming the vain and foolish idea that I am any better or greater than the people who have honored me or the distinguished body to whom I send this message, but instinct with the determination to do my duty as I understand it by preserving intact proper Executive powers, regardless of consequences, I decline to accept any part of the responsibility for a measure which usurps Executive authority. My constituency expects no such thing from me. They will approve what I have said and will be content with nothing less.

The foregoing objections which I make to the passage of this measure are therefore in no sense personal, but reflect my best judgment as to the proper powers and duties of the Executive, **not only with regard to this particular bill, but to all other measures, now pending or hereafter introduced, which seek to transfer the power of appointment of important State officers from the Executive to the Legislative department.**

It is altogether better that an otherwise good measure should fail than that its accomplishment should circumvent the Constitution or sound public policy which has been uniformly acted upon so far as important State officers are concerned, since the organization of the State, except in the instance to which I have called your attention.

In one case, decided in the State of Oregon, which sustained the power of the Legislative department to name the officers which it created, much stress was laid upon the fact that the power had been for a long time exercised by the Legislative department in similar cases without question.

If such a precedent shall be established and maintained in the State of Montana, I wish to have it recorded that it was without my consent and against my solemn protest.

I have intentionally refrained from expressing any opinion as to the qualifications of the person named in the bill, notwithstanding that point has been discussed on the floor of the House and pressed upon me, pro and con.

The fact that two opinions exist and are sustained with equal fervor and pertinacity—to the exclusion of much important business—is of itself a demonstration of the correctness and propriety of the position of the eminent authorities I have quoted, against the policy of turning the Legislative Assembly into a scrambling place for public office, with all its attendant and consequent demoralization, even if it were permissible under the Constitution.

J. K. TOOLE, Governor.

February 24, 1905.

The foregoing veto was sustained February 24, by the House of Representatives.

VETO OF THE ORPHANS' HOME BILL.

To the Speaker of the House of Representatives:

I herewith return House Bill No. 37 entitled "An Act appropriating money for the erecting and equipping of additional buildings for the State Orphans' Home at Twin Bridges, Montana," without my approval and with my objections thereto.

This bill appropriates the sum of $22,000 out of the general fund for the purpose of erecting a school building, a building for the lighting and heating plant, including a laundry and cottage building, and for equipping and converting the present school building into a cottage for the State Orphans' Home at Twin Bridges, Montana, $12,000 of which appropriation is made available out of the revenues for the fiscal year ending November 30th, 1905, and $10,000 thereof made available out of the revenues for the fiscal year ending November 30th, 1906.

I recognize the value of this Institution to the people of the State and would be greatly pleased if our financial condition was such as to justify the improvements contemplated by the bill.

I have studied the financial condition of the State assiduously, and there is no doubt in my mind that the revenues which shall be derived for all purposes, even assuming that an additional twenty per cent of the licenses shall be given to the State at this session, will be inadequate to meet the actual and necessary administrative expenses of the Government as now provided for by law.

In my biennial message presented at the opening of this session, I said:

"It is believed that no State in the Union in its early years of Statehood furnished such splendid institutions of learning as ours, whether considered with reference to the adequacy of its

buildings and equipments or the high standard of excellence possessed by its corps of teachers."

"The Legislature has been uniformly generous in its appropriations for new buildings, a policy which seems to meet with public approval so long as financial condition of the State justifies such expenditures, but there should be no straining of our credit for further improvement in that behalf, in view of the heavy expense necessary to maintain the formidable array now in existence."

"These observations are intended to apply especially to those institutions which are asking large appropriations at this session out of the general fund, a fund which, in my opinion, will for the next two years be barely sufficient to meet the ordinary and necessary expenses of administering the State Government as now provided for, and which cannot be enlarged unless a special tax is levied therefor without violating Section 12, Article 12 of the Constitution."

"Here is the limit of our authority: 'No appropriation shall be made or any expenditures authorized by the Legislative Assembly whereby the expenditures of the State during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the Legislative Assembly making such appropriation shall provide for the levying a sufficient tax, not exceeding the rate allowed in Section nine (9) of this Article, to pay such appropriations or expenditures within such fiscal year.—Section 12, Article 12, Constitution.' "

But as suggested further on in my message, it would be impossible to levy a special tax for the reason that such a tax would not be available until it had first been submitted to and ratified by the people at a general election as provided in Section 2, Article 13 of the Constitution, and inasmuch as that section of the Constitution does not permit the Legislature to create an indebtedness against the State which, singly or in the aggregate with any existing debt or liability, exceeds $100,000, and inasmuch as this limitation of debt has already been exceeded, there is no way under the Constitution by which this appropriation could be made available.

For these reasons I am obliged to object to the passage of the bill.

J. K. TOOLE, Governor.

February 25, 1905.

The foregoing bill was passed over the veto, and hence became a law.

VETO OF HOUSE BILL 59.

To the Speaker of the House of Representatives:

I herewith return House Bill No. 59 entitled, "An Act appropriating money for the completing, furnishing and equipping of the building for the Deaf and Blind at Boulder, Montana, and for the erection and equipment of an additional building which shall contain kitchen, manual training shops, etc., at the Montana School for the Deaf and Blind in Boulder, Montana," without my approval and with my objections thereto.

My sole objection to this bill and the reason therefor is fully set forth in the message accompanying the return of House Bill No. 37, making an appropriation for the Orphans' Home.

The objection is briefly that the revenues of the State for the ensuing fiscal years, 1905 and 1906, will, in my opinion, be inadequate to pay the appropriation made by this bill and will be for that reason beyond the limit of appropriation permitted by the Constitution.

I am advised that bills now pending and looking to the raising of revenue, are likely to be passed and which, if passed, would obviate the objection urged.

I can only look at the condition as it confronts me at this time.

J. K. TOOLE, Governor.

February 27, 1905.

The foregoing bill was passed over the veto, and hence became a law.

VETO OF HOUSE BILL 10.

To the Speaker of the House of Representatives:

I herewith return House Bill No. 10 entitled "An Act to add to Part III, Title V, Chapter IV, Article IV of the Political Code of Montana, relating to the Soldiers' Home, an additional section to be designated Section 2531, relating to the employment therein of the inmates thereof and providing for their compensation and payment," without my approval and with my objections thereto.

The Soldiers' Home of this State is under the control and management of a non-partisan Board of Old Soldiers who are in sympathy with the inmates of that institution and who have striven in every possible way to make their surroundings pleasant and agreeable. Improvements of a permanent character with modern appliances were constructed under appropriations by the State, the last of which were completed during the year ending 1904.

The passage of this bill is not demanded by the Board.

It is believed that the provisions made for them are appreciated by the inmates of that institution. A law has heretofore been passed which restores to them that part of the pension which was heretofore retained by the State as a partial compensation for their enjoyment of the bounty of the State.

It has been found necessary, not only on account of the financial condition of the State by reason of the growth of the various State institutions, but also as a proper health measure, that more or less work of a light character should be performed by the inmates of this institution. I have no information that the work heretofore done by any of the inmates or which is likely to be exacted of them, is burdensome in the least.

I am confident that this measure is not in the interests of the inmates of the Soldiers' Home, however well intended it may be. Having been advised that the Committee on Appropriations has declined to recommend an increase of the estimate of appropriations for the maintenance of the Soldiers' Home, as presented, and believing that if the same was increased that the funds of the State arising from the revenues thereof for the two ensuing years, would be insufficient to pay the same, I cannot approve this bill.

J. K. TOOLE, Governor.

Feburary 25, 1905.

The foregoing veto was sustained by the House of Representatives February 25, 1905.

VETO OF THE "COW BILL."

To the Speaker of the House of Representatives:

I herewith return House Bill No. 263, a bill for "An Act appropriating money for the payment of the claims of certain persons against the State of Montana, for losses arising from the slaughtering of diseased animals, under the provisions of Sections 3005 and 3006 of the Political Code," without my approval and with my objections thereto.

In my opinion, the amounts allowed on the following claims are not excessive provided any allowance can be made under the Constitution and Laws for such claims, to-wit:

Matt Taylor	$ 25.00
Otto Quast	300.00
F. D. Hutchinson	225.00
Herman Brass	60.00
J. Altmeyer	30.00
Benepe, Owenhouse Co.	37.00
Sam Rodoni	25.00
George Anderson	290.00
Fitzpatrick & Watt	25.00
C. Melton	90.00
Lewis Wagner	120.00
J. B. Taylor	195.00
Godfrey Roesti	70.00

All of the other claims embraced in said appropriation bill, in my judgment, after careful investigation, appear to be largely in

excess of the actual value of high class dairy cattle in perfect health.

These cattle were destroyed by the Veterinary Surgeon because they were affected with tuberculosis. They were appraised in the manner provided by law. The claims were presented to the State Board of Examiners and by them disallowed and sent to the Legislature for the reason that there were no funds out of which the same could be paid.

In Section 3014 of the Political Code, it is expressly provided that whatever is allowed for the payment of these claims "must be paid from the State Treasury out of the Stock Indemnity Fund upon vouchers certified by the Veterinary Surgeon." The Stock Indemnity Fund is a special fund not raised by general taxation, but derived from certain livestock interests.

It is further provided by Section 3015 that any stock killed "must in no case exceed the amount specially designated for the purpose and for that period by the terms of this Article, nor must the Veterinary Surgeon or any one else, incur any liability under the provisions of this Article in excess of the surplus in the Stock Indemnity Fund hereinafter provided; nor must any act performed or property taken under the provisions of this Article, become a charge against the State."

Unconstitutional and Illegal.

This bill appropriates the sum of $16,238 for the purpose of reinbursing the owners for stock killed which was affected with tuberculosis, and makes the same payable out of the general fund instead of out of the particular fund known as the Stock Indemnity Fund, against which alone it could be charged.

Section 29 of Article V of the State Constitution is as follows:

"No bill shall be passed giving any extra compensation to any public officer, servant of employe, agent or contractor, after services shall have been rendered or contract made; nor providing for the payment of any claim made against the State without previous authority of law, except as may be otherwise provided herein."

It will be noted again that these charges were not only without previous authority of law as a charge against the general fund, but that, by express statute, it was provided that no act performed or property taken under the law providing for the killing of such stock, should become a charge against the State.

It has been suggested to me, when this point was raised that it was not applied in the case of H. L. Frank against the State of Montana at the Eighth Session, when $50,000 were appropriated for services rendered and material furnished in connection with the State Capitol.

Whatever may have been the theory upon which the Legislature allowed the claim of Mr. Frank, the facts are: that his claim was presented as a claim properly arising under his contract made for the construction of the Capitol and represented a part

of the difference between his claim as presented to the Capitol Commission, and the amount of that claim as allowed by it, and was never, as thought by some, treated or considered as a mere gratuity, but, as a matter of fact, was intended to be a compromise claim under his contract and not otherwise. At least, this is the theory upon which the bill was approved and became a law.

The Constitutional provision above referred to and the several sections of the statute I have quoted which made these claims at the time a charge against the Stock Indemnity Fund and expressly providing that they should not be a charge against the State, makes it impossible for me to approve these claims.

All of the claims presented except those which I have specially noted, in my judgment, are excessive, and if anything is to be allowed, they should be scaled down so that they would not represent more than twenty-five or thirty dollars a head for the cattle killed.

It is general knowledge in this State that under the provisions of the bounty law which paid bounties for the killing of stock-destroying animals largely in excess of that allowed by adjoining States, has resulted in the State of Montana paying from year to year many bounties upon animals killed in such adjoining States, and which never ought to have been paid by the State of Montana. Our bounty law was a sort of premium for that kind of imposition.

If the Legislature of this State shall give its sanction to the payment for killing of animals affected with tuberculosis in Montana, at the rate of $45.00, $50.00 and $60.00 a head, it seems altogether reasonable that all such animals will be brought into the State of Montana, and the Veterinary Surgeon at once asked by the owners thereof to slaughter them. It would seem to encourage the introduction of the disease into the State, when the real object of the law ought to be to destroy it, to say nothing about the effect it would have in speedily depleting the State Treasury.

J. K. TOOLE, Governor.

March 2, 1905.

The foregoing veto was sustained by the House of Representatives March 2, 1905.

VETO OF THE "SUPREME COURT BILL."

To the Speaker of the House of Representatives:

I herewith return House Bill 287, "A bill for an Act to amend sections 12 and 15 of the Code of Civil Procedure relating to the Supreme Court and providing for two General Justices of said Court, and fixing the terms of the additional Justices, providing for the election of their successors, and providing for the appointment of the persons who shall hold office of additional Justices for the first term," without my approval and with my objections thereto.

It may be that the Supreme Court is in need of two additional Justices for the proper transaction of its business. My opinion, however, is that the Supreme Court Commission has rendered valuable assistance and that the docket of the Supreme Court will be practically cleared by the first day of April, and that the Supreme Court Commission has been advised accordingly, and upon this information in making my estimates of the expenses of the State Government, no further appropriation was asked for the Commission. There is a general impression that the business of the Supreme Court ought to be turned off speedily from day to day as presented, but it is believed that the careful consideration of cases demands that even after opinions are prepared, the legal questions involved and the rights of parties, will not suffer if they shall be held for a reasonable time for further consideration. A proper and orderly dispatch of business in the courts does not require that opinions shall be run continuously through the judicial mill like slag through a furnace.

Violates the State Constitution.

This bill provides for two Justices to be appointed by the Governor, one of which shall be appointed for a period of four years and another for a period of six years.

Section 6 of Article VIII of the Constitution is as follows:

"The Justices of the Supreme Court shall be elected by the electors of the State at large as herein after provided."

Section 34 of Article VIII provides as follows:

"Vacancies in the office of Justice of the Supreme Court, of Judge of the District Court, or Clerk of the Supreme Court, shall be filled by appointment by the Governor of the State. * * * * * * * * A person appointed to fill any such vacancy, shall hold his office until the next general election and until his successor is elected and qualified."

The moment the Legislature provides for increasing the Supreme Court by adding two new Justices thereto, that moment there becomes a **vacancy**; then the office exists without an incumbent and is vacant whether it be a new or an old office. A new house is as vacant as one tenanted for years which was abandoned yesterday. We must take the words in their plain and usual sense.

It seems remarkable that such extraordinary power should be placed in the hands of the Governor or any other person to make appointments which extend beyond two general elections, when one or both of these additional Judges could be elected by the people. If such a thing is possible under the provisions of the Constitution which I have cited to the effect that a person appointed to fill a **vacancy** shall only hold his office until the next general election and until his successor is elected and qualified, what emergency or special occasion can be found or assigned for continuing these Justices in office over such a long period of time when, as I have said, two elections intervene? An incumbent so appointed by the Governor might be distasteful to his legitimate constituency, and the theory of the Government for electing Justices of the Supreme Court be subverted and its practice in that regard be prevented. The practice is under our Constitution that the will of the people shall be expressed at frequently returning periods and the body of our laws in this respect is harmonious.

Taking Power From the People.

"If the Legislature," says an eminent Judge of the Court of Appeals of the State of New York, "may take from the people of a locality the power of properly returning occasions of electing certain officers, it effectually draws to itself the power of filling those offices." That certainly is what the Legislature in this bill does for one Justice for a period of four years, and in the case of the other, for a period of six years, **notwithstanding intervening elections.**

Section 8 or Article VIII providing for an increase on the Justices of the Supreme Court, says, among other things:
of the Supreme Court, says, among other things:

"If the Legislative Assembly shall increase the number of Justices to five, the first term of office of such additional Justices shall be fixed by law in such manner that at least one of the five Justices shall be elected every two years."

This seems to be surplusage inasmuch as Section 7 of the same Article provides that the term of Justices of the Supreme Court shall be six years, and there being three Justices at present and our elections being biennial, one Justice at least would have to be elected every two years, no matter whether two more should be added or not.

But this authority given to the Legislature in Section 8 of Article VII above quoted, in my opinion means no more than that be the time what it may and altered in duration when it may, the incumbent shall nevertheless be the creature of the people, "and thus it guards," says the Justice of the Court of Appeals herein quoted, "against a majority of the Legislature adverse in sentiment to the majority of the people of a locality placing or continuing over them in official power one whom they would not select."

Whether right or wrong, wise or foolish, I am a firm advocate of the right of the people to elect their officers, and see no occasion whatever for the appointment, whether made by the Governor or some one else, extending beyond the first or second at most general election, when his successor in office could be elected.

J. K. TOOLE, Governor.

March 2, 1905.

The foregoing veto was sustained by the Senate March 2, 1905.

VETO OF THE RAILROAD COMMISSION BILL.

Pursuant to the Constitution in such case made and provided, I herewith file with Substitute for House Bill Nos. 11, 43, 86 and 153, an Act entitled, "An Act to create and establish a Board of Railroad Commissioners of the State of Montana, providing for the appointment and election of the members thereof and defining their powers and duties, and providing remedies for the enforcement of the provisions of this act and penalties for the violation thereof," my objections in writing thereto.

This bill in several important respects falls far short of meeting the public expectation. First, it names the Commissioners by appointment of the Legislature and fixes their terms of office as follows:

Cornelius J. McNamara, Democrat, two years;
Nathan Godfrey, Republican, four years;
Milton L. Davidson, Republican, six years,

and then provides for the election of one Commissioner, the successor of Mr. McNamara, in 1906, and one thereafter every two years. The appointment of these Commissioners by the Legislature is inconsistent with the theory upon which our State Government was established and the division of powers into the Legislative, Executive and Judicial Departments.

The appointing power in such cases, if it is to be exercised at all, belongs exclusively to the Executive Department, as I sought to maintain by an analogy between the Federal and State Constitutions, in the message vetoing the bill creating the Thirteenth Judicial District and appointing a Judge therefor at the last session of the Legislature. The argument in this behalf was set out in extenso in the message above referred to and I do not repeat it here.

Second. Assuming, however, that in a case like this, where the Constitution is silent, the division of powers is not conclusive, and that the Legislature may in such cases appoint, reflection upon the subject has only confirmed the opinion expressed in a former veto that the exercise of such power of appointment by the Legislature as a matter of **public policy** ought not to be regarded as a Legislative function. This subject has

been so thoroughly exploited that there does not seem to be room for doubt any longer.

I deem it prudent and proper in this connection to quote what was said in the message sent to the Legislature at the last session on the Judge Bill heretofore referred to:

"'No one," says Mechem, a law writer of renown, 'can investigate this question without being strongly impressed with the conviction that the weight of opinion, both among statesmen and Judges, is that the power of appointing to public office as a matter of policy ought not to be regarded as a Legislative function.'

Legislative Appointment Condemned by Story.

"Mr. Story, in his great work on the Federal Constitution, which is alike applicable to our fundamental law, furnishes ample reasons for condemning such a policy."

"Disclaiming any reflection upon any member of this honorable body or the person named in the bill, I quote the language of that great commentator as singularly apt and lucid. With prophetic foresight and consummate judgment, he seems to cover the case in the following language:

"'Those who are accustomed to profound reflection upon the human character and human experience will readily adopt the opinion that one man of discernment is better fitted to analyze and assume the peculiar qualities adapted to particular offices, than any body of men of equal or even of superior discernment; his sole and undivided responsibility will naturally beget a livelier sense of duty and a more exact regard to reputation. He will inquire with more earnestness and decide with more impartiality; he will have fewer personal attachments to gratify than a body of men, and will be less liable to be misled by his private friendships and affections, or, at all events, his conduct will be more open to scrutiny and less liable to be misunderstood.

"'If he ventures upon a system of favoritism, he will not escape censure and can scarcely avoid public detection and disgrace. But in a public body appointments will be materially influenced by party attachments and dislikes, by private animosities and antipathies and partialities, and will be generally founded in compromises, having little to do with the selfish interests of individuals and cabals. They will be too much governed by local or sectional or party arrangements.'

"Speaking of the Executive, he says: 'He will be compelled to consult public opinion in the most important appointments and must be interested to vindicate the propriety of his appointments by selections from those whose qualifications are unquestioned and unquestionable. If he should act otherwise and surrender the public patronage into the hands of profligate men or low adventurers, it will be impossible for him long to retain public favor. Nothing—no, not even the whole influence of a party—could long screen him from the just indignation of the people.

Though slow, the ultimate award of popular opinion would stamp upon his conduct its merited infamy.'

"Last but not least, and greater than all of them, I summon that great statesman and founder of Democracy, Thomas Jefferson, the patron saint of all parties, whose figure it is said 'comes down in history with the Declaration of Independence in one hand and the title deed of Louisiana in the other;' the only man, dead or alive, of whom it has been said by the late Senator George F. Hoar, 'That men of every variety of political opinion, however far asunder, find confirmation of their doctrine in him.' In a letter to Samuel Kercheval, dated July 16, 1816, Jefferson said:

" 'Nomination to office is an Executive function. To give it to the Legislature as we do in (Virginia) is a violation of the principle of division of powers. It swerves the members from correctness by tempting them to intrique for offices themselves and to corruptly barter for votes, and destroys responsibility by dividing it among a multitude. By leaving nomination in its proper place, among Executive functions, the principle of the distribution of the powers is preserved, and responsibility weighs with its heaviest force upon a single head.'

Policy Wrong and Mischievous.

"So that, independent of the question as to whether the power of appointment actually exists under the Constitution, it is evident that the policy of exercising it is altogether wrong and freighted with great possibilities for mischief.

"Two years ago, upon a failure to secure legislation providing for the appointment or election of two additional Justices of the Supreme Court, a measure was brought forth providing for the appointment of a Supreme Court Commission by the Justices of the Supreme Court. This measure, in my opinion, had nothing to recommend it except the fact that the Supreme Court was in urgent need of some assistance.

"I could not, with a proper sense of public duty, give my approval to such a measure, believing it to be an innovation upon the Executive branch of the Government; but, yielding solely to the general sentiment of the Legislature and the Supreme Court, I suffered it to become a law without my approval, believing that there would be no attempt to further encroach upon the salutary principle which recognizes the distinction between the several Departments of Government.

"But it seems that I was in error in this assumption. We find not only this bill, but three or four others of like import introduced into the present session and carried through various stages of consideration, creating new offices of great importance, and naming the officers in the bills.

"I should have been admonished then as I am determined now, so far as my power as Governor is concerned to

" 'Stop innovation in its early stage,
For when the upstart thing grows strong from age
No time nor strength of tenets stop its rage.'

"If bills of this character shall meet with the approval of the Executive and become laws, it is only a question of time when the Executive, having sat supinely by and seen the powers of his Department gradually destroyed and frittered away, will be called upon to approve a bill providing for the appointment of the Governor by the Legislative assembly; and he would be obliged it seems, to approve it or resign in favor of some one who more fully appreciated the responsibilities of his office and had the courage of his convictions.

"So far as I am personally concerned, I have no desire to exercise the power of appointment. The exercise of this power is not always, indeed, not often, satisfactory or agreeable from a personal standpoint. It invaribly leaves in its train disappointed ambitions and often life-long animosities. But such considerations cannot be taken into account or allowed to weight the balance down against a Constitutional duty. There are many other things pertaining to the duties of the Executive which are far from being satisfactory or agreeable, but which nevertheless must be done.

Debt of the Legislature to the People.

"The great debt which the Legislature owes to the people of Montana can be more honorably and more worthily paid than by vainly seeking to find an office for every one of that vast multitude of deserving and patriotic citizens who eagerly seek such appointments.

"Nor can it be said that I shall have fairly discharged my duty to the people by merely dispensing official favors to those who, with their petitions and importunities, daily lay siege to the Executive office. Appointing to office is only a part of my duty. Has the trust been abused? Can it be said that I have in the past, with a false sense of party fealty, turned a deaf ear to those who have politically differed from me, and appointed unworthy men to public office?

"Disclaiming the vain and foolish idea that I am any better or greater than the people who have honored me, or the distinguished body to whom I send this message, but instinct with the determination to do my duty as I understand it by preserving intact proper Executive powers, regardless of consequences, I decline to accept any part of the responsibility for a measure which usurps Executive authority. My constituency expects no such thing from me. They will approve what I have said and will be content with nothing less.

"The foregoing objections which I make to the passage of this measure are therefore in no sense personal, but reflect my best judgment as to the proper powers and duties of the Executive, not only with regard to this particular bill, but to all other meas-

ures, now pending or herafter introduced, which seek to transfer the power of appointment of important State officers from the Executive to the Legislative Department.

"It is altogether better that an otherwise good measure should fail than that its accomplishment should circumvent the Constitution or sound public policy which has been uniformly acted upon so far as important State officers are concerned, since the organization of the State, except in the instance to which I have called your attention.

"In one case, decided in the State of Oregon, which sustained the power of the Legislative Department to name the officers which it created, much stress was laid upon the fact that the power had for a long time been exercised by the Legislative Department in similar cases without question.

"If such precedent shall be established and maintained in the State of Montana, I wish to have it recorded that it was without my consent and against my solemn protest."

Upon this question of policy, the Governor may properly exercise his judgment. To this extent he is not only the representative of the Executive Department, but he is a branch of the Legislative Department, and his approval or disapproval gives life or death to Legislative action—conditionally when the Legislature is in session and absolutely when it has adjourned within five days after a bill comes into his hands.

Inherently Wrong and Vicious.

Third. Under our system of government by elections, **a measure like this which makes appointments and extends them over and beyond two regular biennial elections, is inherently wrong and manifestly vicious.** It cannot be justified or mitigated under the pretense of a temporary appointment which is sometimes made by a Legislature to offices of its own creation.

Who would contend that the appointment of two members, or a majority of this Commission, for the period of four and six years respectively,—two biennial elections intervening—was a **temporary** appointment?

Provision is made in the bill for appointment by the Governor in case of **vacancy,** but great care was taken to see that in case the Governor appointed to fill a vacancy, his appointee should not fill out the unexpired term of his predecessor, but that he should **"hold his office until the next general election."**

The difference in principle is the difference between "tweedledum and tweedledee," but the difference from a political standpoint, if the Legislature had ever descended to such a consideration, might have been great indeed. These Commissioners should have been elected by the people at the first opportunity offered under the Constitution and Laws.

This was urged in a veto message which I sent to the last Legislature on the last night of the session, to House Bill No.

287, providing for the increase of Justices in the Supreme Court, in which I said:

"This bill provides for two additional Justices to be appointed by the Governor, one of which shall be appointed for a period of four years, and another for a period of six years. * * * * It seems remarkable that such extraordinary power should be placed in the hands of the Governor or any other person to make appointments, which extend beyond two general elections when one or both of these additional Judges could have been elected at the next general election or the next thereafter ensuing."

"What emergency or special occasion can be found or assigned for continuing these Justices in office over such a long period of time when two biennial elections intervene? An incumbent so appointed by the Governor might be distasteful to his legitimate constituency, and the theory of the Government for electing officers be subverted and its practice in that regard be prevented. The practice is, under our Constitution, that the will of the people shall be expressed at frequently returning periods, and the body of our laws in this regard is harmonious.

"'If the Legislature,' says an eminent Judge of the Court of Appeals of the State of New York, 'may take from the people of the locality the power, at properly returning occasions, of electing certain officers, it effectually draws to itself the power of filling those offices.'"

Usurping Elective Rights of the People.

Frequently recurring elections is one of the bulwarks of American institutions and guards against a majority of the Legislature, adverse in sentiment to a majority of the people, continuing over them in official power men whom they might not be willing to select.

I further said in that connection that whether right or wrong, wise or foolish, I was a firm advocate of the right of the people to elect their own officers, and knew of no occasion for the appointment, whether made by the Governor or some one else extending beyond the first general election when his successor in office could be elected.

The same general principle was announced in my biennial message to the Eighth Legislative Assembly, reiterated in public speeches all over the State last fall and renewed in my message to the Legislature that passed this bill; and no plan or suggestion looking to any other method than the election of Railroad Commissioners was ever put forth on the stump or elsewhere since a Railroad Commission was first agitated in this State, until the Ninth Legislative Assembly evolved this particular scheme.

In order to be most emphatic upon this question, I reiterate what I said to the Legislature on the subject of electing a Railroad Commission and all important State officers, two years ago:

"A commission to be elected by the people should be invested

with as ample powers as this provision (Section 5, Article 15 of the Constitution) will warrant."

"Under the law, as it now stands, the Governor of the State appoints the State Examiner, State Inspector of Mines, State Coal Mine Inspector, State Boiler Inspector, Commissioner of Agriculture and Labor, State Veterinarian, Register of the State Land Office, State Land Agent and Game Warden.

"These are all officers of high rank, having to do with most important parts of the public service. The election of these, as well as all other officers, by popular suffrage, is not only consistent with the safety of the people, but it belongs to them as a right and duty.

All Power Belongs to the People.

"The Czar of Russia appoints his officers according to his sovereign pleasure, for he is regarded by his subjects as the source of all political power. But the proposition that all power is inherent in the people needs no elucidation in Montana.

"It has been well said that the right to choose their own officers in the first place, and in the second place the exercise of this right in frequent elections are the two prominent characteristics of a free people.

"The right itself distinguishes our Government from a Despotism; the frequent exercise of the right distinguishes it from an Elective Monarchy.

"It does not militate against the argument to say that the power has seldom, if ever, been abused by a Governor of this State, or that, as must be conceded, the present incumbents of the appointive offices referred to, are men of the highest character and integrity, possessing the necessary qualifications for faithful and efficient public service. It is the system that is reprehensible—a system which is inconsistent and inharmonious with the genius and spirit of our institutions in its attempt, without reason or necessity, to mingle and fuse together disagreeing elements of a Democracy and a Monarchy.

"In short, in my opinion, Executive appointments or patronage, if you please, and popular sovereignty are antagonistic elements in our form of government, and ought to be abandoned. It is on general principles like these, rather than for special reasons, that I recommend the election by the people of these important officers.

"In keeping with the views here expressed, I indulge the hope that any office of importance created by this or any subsequent Legislature will not be made the subject of appointment by the Executive or otherwise, but that provision will be made for the election of the person to fill the same **at the next ensuing general election**, and in all cases where the Constitution does not otherwise provide, and it is deemed desirable to fill any vacancy **temporarily**, I suggest that the bill creating any office, board or commission, designate the person, board or commission to fill the same **temporarily and until the next general election.**

"The duties imposed by the Constitution upon the Executive generally, and in the matter of appointments especially, are accepted with all the responsibilities that instrument expresses or implies, but there does not appear to be any reason why, until a general election is held, the Legislative Department should not assume whatever responsibility attaches to a temporary appointment of any officer whose office is created by it."

While the last two paragraphs above quoted support fully the objection which I now make to carrying a majority of the Railroad Commission for a period of four and six years, **and over two general elections,** it is only fair to say that they go further than I am now willing to concede, after a thorough investigation of the powers of the Legislature in the matter of appointments of Executive officers.

Concession Made Without Investigation.

The power and duty to appoint **temporarily** was in reality a concession made by the Executive without investigation and in order to forestall what promised to be an ugly contest as to who should appoint delegates or commissioners to the Louisiana Purchase Commission, a contest which had already taken form in certain factions of the Democratic party in the State, and was then being strenuously urged in prominent newspapers of the State.

Notwithstanding the suggestions made by me as to the Legislature's making certain **temporary** appointments, certain gentlemen of all political parties opposed it in the Eighth Session as an encroachment upon the powers of the Executive; and the measure then pending, by which the Legislature proposed to make the appointments, was defeated under the leadership of a prominent Republican then in the House of Representatives.

The result was that an extra session of the Legislature was called for the sole purpose of making such appointments. The authority to appoint was given to the Governor, who named the Commission, and the State was represented and well represented at St. Louis.

This Commission, at the time, seemed to be justified by the environments of the situation, but it has proved only another illustration of the fact that a principle once surrendered trembles at every new attack. The rule should have been and henceforth shall be **obsta principiis.**

Now what reason is there for Legislative appointments? Manifestly, we only change the place and keep the pain. The Legislature as a rule must rely upon the representations of others, representations beset with motives of which they can know little or nothing, setting forth fictitious claims of candidates with all the exaggerations of personal friendships, or depreciating real merit with all the zeal of rival interests or the malignity of private hate.

Many men, through the means and applicances which may be

brought to bear upon the Legislature, obtain promotion to places of trust and power who, if compelled to submit their claims to the intelligence of the people at the polls, would be permitted to occupy themselves in some more quiet and useful employment.

I need not say, of course, that I do not refer to the gentlemen named in this bill, concerning whom, so far as I know, there is but one voice, and that voice, so far as it relates to their personal integrity, is one of unqualified commendation.

Governor Should Have Power to Remove.

Fourth. This bill is fatally defective in not providing for the summary removal by the Governor of any Commissioner who neglects his duty or abuses his trust. Four years of abuse of power and continued contumacious conduct by one, and six years by another cannot be said to be in the interests of the people. It is true that Section 35 of the Bill subjects a Commissioner to removal under the general provisions of the Penal Code, but that involves, necessarily, a long trial and possibly long delays.

The power of removal ought to follow, as a matter of course, the power of appointment. If this power of appointment was lodged with the Governor there would be no difficulty in its exercise if occasion should arise. If the power of appointment belongs to the Legislature, then the power of removal should belong to them, but inasmuch as the Legislature does not meet but once in two years, this power could not be exercised advantageously.

It therefore follows that it was an egregious error in the formation of this bill when it failed to provide for summary removal by the Governor in case of misconduct upon the part of the Commission of any member of the same.

Fifth. There is no limit to the indebtedness which this Commission can create against the State by the employment of counsel and other expenses. Especial provision is made for employing additional counsel, experts and accountants to that of the Attorney General, and for the submission of extraordinary accounts to the Board of Examiners to be allowed as other expenses of said Commission.

It will not do to say that all of the expenses incurred by the Commission are limited to $40,000, the sum appropriated by the bill, because the bill does not so provide. Certain expenses being expressly authorized by the law creating this Commission, there could and would be presented by the Commission to the State Board of Examiners, who would be obliged to allow them if reasonable and accompanied by the proper vouchers, other expenses which would be paid if the $40,000 appropriated had not been exhausted, or, if the same had been exhausted, the claim would have to be allowed and certified to the next Legislature as a deficiency claim.

Section 689 of the Political Code is as follows:

"If no appropriation has been made for the payment of any claim presented to the Board, the settlement of which is provided for by law, or if an appropriation made has been exhausted, the Board must audit the same, and if they approve it, must transfer it to the Legislative Assembly with a statement of their approval."

This opens wide the door for a flood of claims to be presented against the State, and if the liberality and generosity of the last Legislative Assembly can be taken as a fair index to that of the next, the possibilities for the future in this regard are sufficient to justify the alarm of the taxpayers.

Ample Time to Revise This Bill.

The first three objections which I have presented were urged strongly in the veto which I sent to the House of Representatives on Friday, February 24th, and the statement therein emphatically made that any pending or future legislation made along that line, to-wit: the appointment by the Legislature of important State officers, would meet with my certain and unqualified disapproval.

There was ample time between the 24th day of February and the second day of March, being the day of adjournment, and ample time between the 24th day of February and the 27th day of February, while this bill was yet in the hands of the House of Representatives, to have so framed it, if they desired in good faith to pass it, as to have obviated the objections which the Legislature well knew the Executive would make to it; but the Legislative Assembly, while it still had this bill in its possession and under its control, failed and refused to take such steps as were likely to secure its final passage as a law.

Instead of this, a majority of the House of Representatives proceeded in bad temper and worse taste to pass a resolution in the nature of censure directed at the Governor for the expression of an opinion which it knew would be controlling on this bill—a resolution so extraordinary and unprecedented that the Senate promptly, peremptorily, unceremoniously and practically unanimously killed it.

J. K. TOOLE, Governor.

March 6, 1905.

Filed with the Secretary of State after adjournment of Legislature and had the effect of a veto.

VETO OF THE ANTI-FUSION BILL.

Pursuant to the Constitution in such cases made and provided, I herewith file my objections to Senate Bill No. 28. This bill was designed to prevent the fusion of political parties by prohibiting the name of any candidate from being placed on more than one ticket at an election. By it, the immense size of the ticket would probably be reduced in time to a convenient form and size by the elimination of those political parties which could not reasonably hope for success at the polls without fusion with some other recognized political party, and this, I think, is the only feature that recommends it outside of the provision intended to prevent what is known as the "endless chain," in voting.

While the bill might tend to prevent the recognition of mushroom parties believed by many to have no greater motive behind them for existing than a division of offices without regard to principles advocated, still if this be true in some instances, yet in this day and generation where there seems to be a well devised and widespread effort to enlarge rather than curtail the rights of the people, it is better to submit to this imperfection, if imperfection it be, than to fly to others, which might be worse by adopting a new method at variance and out of harmony with the spirit of the times.

J. K. TOOLE, Governor.

March 6, 1905.

Filed with Secretary of State after adjournment of Legislature and had the effect of veto.

VETO OF MEAT AND MILK INSPECTION BILL.

Objections of the Governor to House Bill No. 176, "An Act providing for a Meat and Milk Inspector in cities having four thousand inhabitants or over within the State of Montana, and prescribing the duties and powers of such Inspector, and to regulate the sale of meat and milk and live domestic animals for food purposes, and prescribing penalties for the violation of the provisions of this act."

This bill, if it should become a law, would only be, at best, a local measure, and the best sanitarians agree that local laws are inadequate and almost always inoperative. It is substantially the law enacted by the Seventh Legislative Assembly which was never enforced and was repealed by the Eighth Legislative Assembly enacting a law in lieu thereof, applicable throughout the State, and under which the best results obtainable are had.

The present bill would not furnish protection for those cities appointing and paying for inspectors:

First. Because the office would soon fall a prey to the pernicious influences of local politics.

Second. No person is eligible for appointment as inspector

under the bill "unless he is a graduate in good standing of some regular and reputable medical college, and admitted to practice within the State of Montana, and who has been a resident of said city for **at least one year,** and before such appointment, he shall be required to exhibit his diploma as such graduate."

Inasmuch as there are only three cities in the State where veterinarians reside who have the necessary residence qualification, it is evident that the great majority of the cities in the State could not obtain the benefits, whatever they may be, of this bill.

Third. Section 3 leaves the matter of inspection of live animals and meats entirely at the option of the inspector. If the bill is to have any value whatever to the public, it should be made **the imperative duty** of the inspector to inspect live animals and meats, whereas the provision is that "if in the judgment of the inspector such inspection is necessary" then he may inspect.

Fourth. Section 4 of the bill provides that any "person selling or offering for sale, or dealing in fresh meats, fish, oysters or poultry in any city in which a Meat and Milk Inspector is appointed" shall pay a license, etc.; but there is not to be found in the bill any provision whatever for inspecting or destroying **fish or poultry,** which food is of the greatest need of inspection, and is subject to the greatest danger of deterioration.

Fifth. Section 10 is ambiguous, to say the least of it, as it requires of each dairy a certificate of freedom from tuberculosis and other infectious diseases and says "he shall be at liberty to test such cattle with tuberculosis." But the bill utterly fails to provide any means of ascertaining whether or not an animal is tuberculous, since this section plainly says that he, **the dairyman,** shall be at liberty to test such cattle with tuberculosis.

No authority can be found in the bill for the Inspector to test the dairy cattle with tuberculin. It is believed that if this bill should become a law and be put in force, that the people would continue to drink milk from tuberculous cattle, and that the provisions of the bill would be an incentive rather than a hindrance for dishonest dairymen to sell milk to the public which was the product of tuberculous cows.

Sixth. Section 12, relating to "skimmed milk," would certainly invite fraud, as it merely specifies that milk of less than three per cent butter fat shall be labeled as "Skimmed milk." It does not specify what size the label shall be or where placed, **so that a dishonest milkman could readily sell two per cent milk for pure milk by having a small label sufficient to protect him and invisible to the purchaser.**

Seventh. Section 15 contains a most pernicious provision by **providing for the placing of formaldehyde in milk by the Inspector** in the bottle which is given to the dairyman, and from which the dairyman can make his test.

Any one can plainly see, under the provisions of this Section, that **it would be practically impossible to obtain a conviction for**

using formaldehyde in milk where the Inspector had furnished a sample to the dairyman, containing this preservative, known to be a poison.

It is believed that under the provisions of this bill a dairyman, when so inclined, could milk diseased cows, producing milk that would carry milk-born diseases or milk produced under the most loathsome and filthy conditions to be shipped from an outside county into a municipality without fear of hindrance.

The law now in force and passed by the Eighth Legislative Assembly contains all the necessary sanitary provisions sought to be covered by the present bill, without any of the objectionable features above indicated.

It is true that the Ninth Legislative Assembly fails to make any appropriation to carry out the provisions of the old law, but it is my opinion that it is better for all concerned that we should endeavor to get along under that law and trust to the future ability and disposition of the next Legislature, to pay the necessary expenses of administering that law, if it is possible to obtain inspectors under such conditions, than to impose such a law as the present one upon the people of the municipalities of this State, which would simply create an expense without any compensating features or corresponding benefits.

If it should turn out that inspectors cannot be found who will undertake to serve under the law of the Eighth Session, and trust to the next Legislature for payment, I know no reason why the city councils of the various municipalities of the State may not provide for regulating the inspection and sale of meat, milk, fish and poultry by ordinance in a more comprehensive and satisfactory way than that proposed by this bill.

J. K. TOOLE, Governor.

March 11, 1905.

Filed with the Secretary of State after adjournment of Legislature, and had the effect of a veto.

VETO OF LIVE STOCK TRESPASS BILL.

I herewith file my objections to Substitute for House Bill No. 57, "An Act declaring trespass by live-stock held in herd to be a misdemeanor and prescribing the punishment therefor, and repealing an Act entitled, "An Act to protect the owners of Real Estate and claimants under any of the land laws of the United States, and lessees of State lands from trespass by depredation or injury from live stock held in herd," approved March 6th, 1903."

This act provides in substance that it shall be unlawful for any person or corporation, without the consent of the owner or the possessor of the land, to drive or cause to be driven any live stock held in herd on or over any field or ranch property or other lands

excepting mining claims which are in the lawful possession of any individual or corporation, or to permit such live stock to enter thereon, whether the same be fenced or not, provided that if such lands are not fenced the boundaries thereof shall be clearly defined by suitable monuments or stakes or ploughed furrows indicating the location thereof.

The violation of the foregoing provisions is made a misdemeanor, punishable by a fine of not less than $25.00 nor more than $500.00. Section 3 provides for the repeal of the law of 1903.

Such a measure as this bill provides would, in my opinion, work a great and unnecessary hardship upon persons taking their stock to water or market.

If persons and corporations persist in buying up immense tracts of land in this State, to be used merely for grazing purposes, tracts which, in many instances, extend for many miles up and down a stream, cutting off the possibility of ingress or egress to water or market by small owners of stock, they certainly ought to fence their possessions or, at least, comply with the present law, which requires such owners or lessees to define the boundaries of their claims by monuments or ploughed furrows around the exterior limits of the same.

While the law of 1903 is, perhaps inartificially drawn and possibly could not be enforced against a trespasser in a criminal proceeding, it is clear that there is an ample remedy in a civil action against one who "**wilfully** drives or causes to be driven any live stock held in herd on or over any field, ranch property or valid claim in process of title, under any of the land laws of the United States or under lease from the State of Montana, whether the same be fenced or not."

If further protection is required for the reasonable use and occupation of lands which are not fenced, I think it far better that the matter should be left to the next Legislature, when a bill not so stringent in its provisions might be passed.

J. K. TOOLE, Governor.

March 11, 1905.

Filed with the Secretary of State after adjournment of Legislature, and had the effect of a veto.